

FISH & WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: October 16, 2014

Agenda Item: Cow Creek Instream Flow Lease

Division: Fisheries

Action Needed: Final

Time Needed on Agenda for this Presentation: 10 minutes

Background

In May the F&W Commission directed FWP to negotiate a water-right lease on Cow Creek with the Sand Creek Ranch, subject to final Commission approval. These negotiations were completed in August. The dam on Cow Creek Reservoir on the east side of the Bears Paw Mountains was repaired as part of a Future Fisheries Project. Cow Creek above the reservoir supports a brook trout fishery, while Cow Creek Reservoir supports a popular mixed fishery including walleye, tiger muskellunge, yellow perch, channel catfish, black crappie and brook trout. The project agreement calls for the owner, Sand Creek Ranch, to cease diverting water from Cow Creek Reservoir or Cow Creek for 20 years. A water lease and temporary change to instream flow is needed to protect the water rights and stream flow in Cow Creek. If the water lease is approved, FWP will make application to DNRC to temporarily change a portion of the landowner's water right to instream in Cow Creek. There would be no additional monetary compensation for the water right lease (FWP already provided \$73,705 through the Future Fisheries Improvement Program for rehabilitation of the Cow Creek Dam).

Public Involvement Process & Results

The Future Fisheries Improvement Program's review panel evaluated the project as part of the public review process and recommended approval. The F&W Commission approved funding of the project. To change a portion of the water right to instream flow, FWP must make application to DNRC. This application would be noticed to the public, and potentially affected parties would have the opportunity to object to the change to instream flow. In addition, DNRC would conduct an environmental review of the proposed change to instream flow.

Alternatives and Analysis

An alternative would be to not lease the water for instream flow. Because the Future Fisheries project agreement already requires that water not be diverted from Cow Creek for 20 years, this alternative may jeopardize Sand Creek Ranch's water rights, as they could be considered to be abandoned if not put to beneficial use. Additionally, the water could not be protected from diversion or call by junior water-rights holders.

Agency Recommendation & Rationale

FWP recommends the Commission approve the water-right lease with Sand Creek Ranch to protect their water rights and to protect the flow in Cow Creek.

Proposed Motion

I move to approve the water-right lease on Cow Creek with Sand Creek Ranch and direct FWP staff to submit to DNRC an application to temporarily change the water rights to instream flow as described in the lease agreement.